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Clerk's Office
Board of Overseers of the Bar

BOARD OF OVERSEERS OF
THE BAR

Petitioner

vs.

MARY N. KELLETT, ESQ.
Maine Bar No. 7576

Respondent

REPORT
FINDING OF PROBABLE CAUSE
FOR FILING OF INFORMATION
WITH COURT –PANEL A OF THE
GRIEVANCE COMMISSION

On October 22 and October 23, 2012, pursuant to due notice, Panel A of the Grievance Commission conducted a disciplinary hearing open to the public according to M. Bar R. 7.1(e)(2), concerning the Respondent, Mary N. Kellett, Esq. This disciplinary proceeding was commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar through Bar counsel on April 6, 2012, alleging violations of M. Bar R.P.C. 3.1, 3.2(f), 3.6(d), 3.7(a), (b), (c), (e), (g), (i).

At the disciplinary hearing, the Board was represented by Bar Counsel Scott Davis, Esq. and Respondent was present and represented by Ronald W. Lupton, Esq. Joint exhibits marked Board Exhs. 1-54 were admitted mostly without objection. The Panel heard testimony from the following witnesses:

Vladek Filler
Daniel Pileggi, Esq.
Ellsworth Police Chief John DeLeo
George T. Dilworth, Esq.
Gouldsboro Police Officer Guy Wycoff
Washington County Deputy Sheriff Travis Willey
Ellsworth Police Officer Chad Wilmot
Stephen McFarland
Donald W. Macomber, Esq.
Fernald R. LaRochelle, Esq.

Having heard the testimony and reviewed the evidence submitted, the Panel hereby makes the following findings:

The Panel acknowledges that:

- its members do not have vast experience in the criminal arena;
- Ms. Kellett testified that she had a caseload she described as "too much" in 2007 and 2008;
- Ms. Kellett was an experienced prosecutor in 2007 and 2008;
- Ms. Kellett recently won an award for her advocacy;
- Rebuttal arguments can be difficult;
- Ms. Kellett has no prior disciplinary record and cooperated with the Board's investigation.
- mistakes are not necessarily violations of the bar rules. In fact, the Panel finds that Ms. Kellett's reference in her closing argument to a crime anecdote, her mention of a rape kit and her burden shift reference (which she later corrected on rebuttal) were certainly mistakes which could have caused prejudice, but, in the Panel's view, do not rise to the level of violations of the bar rules.

However, with liberty at stake, the panel heard testimony involving two instances that cause concern.

Ms. Kellett's "where is the evidence?" rebuttal argument purposefully amplified the exclusion of evidence and caused prejudice to the defendant. Her comments drew attention to evidence that was missing because she had successfully objected to its admission. Despite the Superior Court's rulings and the Law Court's decision regarding the unfair prejudice to the defendant, Ms. Kellett testified at the disciplinary hearing that she would not change that aspect of her rebuttal argument, if she were to do it again. Ms. Kellett's own expert, Fernald R. Rochelle, Esq., testified that she appeared "stubborn" and as if she were "bucking the court" during her testimony. This willful recalcitrance makes it appear likely that Ms. Kellett would repeat this unfairly prejudicial conduct.

With regard to the discovery issues, at least two key pieces of exculpatory evidence, the 911 recording from April 24, 2007 (Exhibit 46) and the Ellsworth American witness statements (Exhibit 41), were not produced before trial. The seriousness of this issue cannot be overstated. The evidence was requested by letters, subpoena and motion. The evidence should have been produced pursuant to rules, a court order, case law and ethical obligations. The Board's expert, George T. Dilworth, Esq., testified that the evidence was "critical" to the defense and that Ms. Kellett had the obligation to diligently search for all evidence held by the police and produce it. Ms. Kellett and her colleagues testified that they didn't see the relevance of one of the requests and therefore didn't follow up to produce it in any timely manner.

In addition, the testimony of Ms. Kellett at trial indicated to the Panel that Ms. Kellett's supervisor, the then District Attorney, failed to comply with M. Bar R. 3.13(a)(3) by ratifying Ms. Kellett's conduct and obviously disregarding Attorney Pileggi's ethical concerns set forth in his letter to Ms. Kellett dated May 29, 2008, (Exhibit 32), which Ms. Kellett testified she brought to his attention.

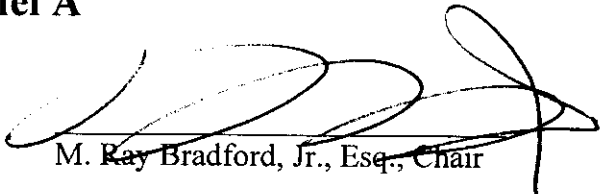
After considering the evidence presented at the hearing, the Panel concludes that Ms. Kellett's specific violations of the Maine Bar Rules in this matter include at least the following:

- 1) engaging in conduct unworthy of an attorney in violation of M. Bar R. 3.1(a);
- 2) engaging in conduct prejudicial to the administration of justice, in violation of M. Bar R. 3.2(f)(4);
- 3) failing to employ reasonable skill and care, in violation of M. Bar R. 3.6(a);
- 4) failing to make timely disclosure of the existence of evidence that tends to negate the guilt of the accused, mitigate the degree of the offense or reduce the punishment in violation of M. Bar R. 3.7(i)(2);
- 5) suppressing evidence that the lawyer had a legal obligation to produce in violation of M. Bar R. 3.7(g);
- 6) assisting the State of Maine to violate the Maine Rules of Criminal Procedure and the court's Order in violation of M. Bar R. 3.6(d); and
- 7) employing means that were inconsistent with truth and seeking to mislead the jury in violation of M. Bar R. 3.7 (e)(1)(i).

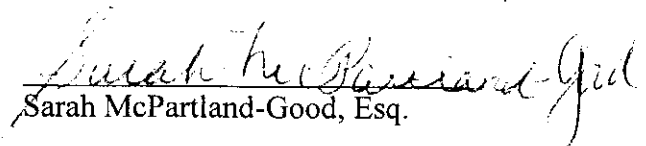
Based upon the petition, admitted exhibits, and testimony presented at the hearing, including Ms. Kellett's testimony regarding her conduct, pursuant to M. Bar R. 7.1, the panel concludes that an appropriate sanction in this matter would be a period of suspension. Accordingly, the Panel finds probable cause for such discipline, and hereby directs Bar Counsel to commence an attorney disciplinary action by filing an information with the Court pursuant to M. Bar R. 7.2(b).

Grievance Panel A

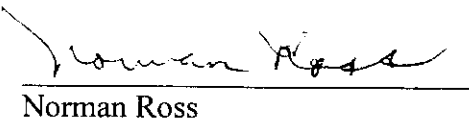
Dated: 12-5-12


M. Ray Bradford, Jr., Esq., Chair

Dated: 12-5-12


Sarah McPartland-Good, Esq.

Dated: 12-5-12


Norman Ross